IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 784 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANKAJ KANAIYALAL MEHTA

Versus

ORIENTAL FIRE AND GENERAR INSURANCE CO LTD

Appearance:

MR KS NANAVATI for Petitioner

MR SURESH M SHAH for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/01/2001

ORAL JUDGEMENT

1. This is an appeal filed by the original plaintiff challenging the judgment and decree dated December 10, 1979, passed by the learned Judge of the City Civil Court, Ahmedabad in Civil Suit No.272 of 1976, under

which the learned Judge of the City Court dismissed the said suit of the appellant for declaration that the termination of service of the appellant w.e.f. 16.12.1974, by the respondent above-named is illegal and unconstitutional.

2. The appellant was appointed as Clerk cum Typist in the employment of the respondent in 1972. It was an appointment for a limited period which was extended from time to time. Ultimately an order was passed at Exh.22 extending the appointment upto 16.12.1974. No further extension was ordered, and therefore, the service of the appellant came to an end by afflux of time on and from 16.12.1974. The appellant had challenged the said order before the trial court saying that the respondents were state under Article 12 of the Constitution of India and therefore the respondents were expected to act reasonably. It was further contended before the trial court that termination was illegal and therefore it may be quashed by the trial court. It was further contended before the trial court that other similarly situated employees were regularized and the service of the appellant was not regularized. It was also contended that the case of the appellant was recommended for regularization to the higher authority and it was not accepted. It was therefore contended that the aforesaid order of the respondent is illegal and therefore it may be quashed and set-aside. The trial court registered the suit and issued summons to the respondent, written statement was accepted and thereafter it raised issues at Exh.42. After recording the evidence and after hearing the parties, the trial court found that the termination was not illegal, and therefore, the suit was ordered to be dismissed as aforesaid. Feeling aggrieved by the said judgment and decree of the trial Court appellant has preferred this appeal before this Court. It has been mainly contended here that the termination was effected without following any procedure of hearing. That the other persons similarly situated have been regularized and the services of the appellant have not been regularized. It is further contended that the local office has recommended the case of the appellant for regularization who was yet in service and has been terminated w.e.f. 16.12.1974 and therefore the termination is illegal and is required to be quashed.

3. The appeal was admitted and notice was issued to the other side. Mr.M.S.Shah, appears in response to the notice. I have heard the learned Advocates for the parties and have perused the papers.

4. The facts are not in dispute. The appellant was initially appointed as Clerk cum Typist in the employment of the respondent in December, 1972. The appellant's service was thereafter extended from time to time and the last order was issued has been produced at Exh.22, which shows that the appointment was on stopgap arrangement and was extended upto 16.12.1974 temporarily. No further orders have been passed and the aforesaid period has not been extended thereafter. The above said aspects are not in dispute. The learned advocate for the appellant has contended at length that no hearing was given to the appellant before the services were terminated. Now this is not a matter in which stigma has been there to the order of termination of the service of appellant. The termination has come into play by afflux of time. In above view of matter no hearing was required to be given to the appellant before the termination of service which has come into play by afflux of time. It is further contended that other similarly situated persons have been regularized in service and the service of the appellant has not been regularized. On this point firstly the learned advocate for the respondent has argued at length that there was no prayer for regularization of service of the appellant. It is also his case that this issue could have been adjudicated before the proper forum under the Industrial Disputes Act, 1947 and the appellant has not availed of the said opportunity. Apart from the above fact it seems that the said prayer was not made in the relief clause in the plaint by the appellant before the trial Court. Moreover it is difficult to hold at this stage in this appeal that the others who have been regularized were similarly situated persons since each case has to be dealt with on the facts and circumstances of each case. Therefore the appointment orders of all persons would be relevant. The process undertaken for their appointment would be relevant; their educational qualifications would be relevant; the terms and conditions on which they have been appointed and regularized would be relevant. Unless these materials are placed on records, it cannot be said that those others regularized by the respondent were on par with the case of appellant. It therefore cannot be said that the respondents have committed the illegality by not regularizing the services of the appellant. It is more so when there was no such prayer made by the appellant in the plaint before the trial court.

5. The learned advocates for the parties have taken me through the relief clause of the plaint before the trial court which does not show the prayer for regularizing of services of the appellant with the

respondent. Therefore no illegality can be said to have been committed by the respondent when the appellant's services have not been regularized. It is next contended that the lower office had recommended the case of the appellant to the higher office for regularization. Now simply because the proposal has been made by the lower office to the higher office it does not mean that the higher office has accepted or has to accept the proposal. Moreover, it appears that during the pendency of the said proposal the service of the appellant were extended. This probably appears to be with a view to see that if the proposal is ultimately accepted and the services of the appellant are regularized then the appellant would get benefit of the said additional continuous service. However, when the higher office does not accept the proposal then the court cannot compel the respondent to regularise the service of the appellant. Moreover, there was no prayer made in the plaint in that regard. Thirdly, the appellant did not approach the proper forum for the said relief

6. The learned advocate for the appellant has relied upon a couple of decisions in order to argue that the services of the appellant could have been regularized by the respondent. The first is Jacob M. Puthuparambil Vs. Kerala Water Authority reported in AIR (1990) SC 2228. There it has been observed that appointment is made by way of stopgap arrangement till regular appointment were made and when the employees continue for a period of not less than 2 years and when there was requisite qualification then he was entitled to get his service regularized. Another decision relied upon by him is in case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation reported in AIR 1990 (1) SCC 361. There also same view has been adopted by the Honourable the Apex Court. At the same time in a subsequent decision recorded in P.Ravindran Vs.Union Territory of Pondicherry reported in (1997) 1 SCC 350, a different principle of law has been enunciated in that decision and the same is relied upon by this court in case of Rupsinh Sonsinh Parmar Vs. Sabar Kantha District Panchayat reported in 1998 (1) GLH 263; there it has been laid down by this court that it is clear that the persons who have already entered in service on ad-hoc or temporarily basis cannot get any weightage. The learned advocate for the appellant has submitted that in that judgment the Supreme Court has directed relaxation of age till the date of next selection. We are not at a point or stage of fresh selection. Therefore, this argument would not help the appellant.

7. It is very clear that the Honourable the Supreme Court has taken up a stand that it is illegal and improper to have back door entries first and then get those entries regularized. This would defeat the right of the persons awaiting the employment. Back door entry has been time and again deprecated by various judicial Tribunals in various decisions rendered at different times. In this case also the appellant was not regularly appomted in accordance with Recruitment Rules. He was appointed on Stopgap basis and therefore he cannot be heard to say that his service should be regularized and he should continue in service though he entered through back door entry.

8. Any way the said prayer was not before the trial court and the trial court has also considered that aspect.

9. In above view of the matter the judgment and decree of the trial court cannot be treated to be illegal or erronous. It cannot be said that the termination is illegal. In fact it is not termination but the service have come to an end by afflux of time under special contract at Exh.22. No stigma has been attached and therefore no hearing was required and no enquiry was required. In that view of the matter, the judgment and decree of the trial court cannot be treated illegal or erroneous and therefore they cannot be lightly set-aside. There is no merit in the present appeal and therefore it is required to be dismissed. The appeal is therefore ordered to be dismissed. The judgment and decree of the trial court are confirmed. However, in view of the facts and circumstances of the case there shall be no order as to costs.

18.1.2001 (D.P.Buch, J).

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